

TITLE 6. ECONOMIC SECURITY**CHAPTER 11. DEPARTMENT OF ECONOMIC SECURITY
JOB TRAINING PARTNERSHIP ACT (JTPA)**

(Authority: A.R.S. § 41-1954 et seq.)

ARTICLE 1. GENERAL PROVISIONS

Section

R6-11-101.	Administrative agency
R6-11-102.	Definitions
R6-11-103.	Eligibility criteria
R6-11-104.	Selection-enrollment responsibility
R6-11-105.	Needs-based payments
R6-11-106.	Nepotism
R6-11-107.	Confidentiality
R6-11-108.	Cost principles
R6-11-109.	Title III matching requirements
R6-11-110.	Matching JTPA education 8% funds
R6-11-111.	Complaint resolution procedures

ARTICLE 2. JTPA APPEAL PROCESS

R6-11-201.	Right to appeal
R6-11-202.	Hearing request
R6-11-203.	Notice of hearing
R6-11-204.	Hearing procedures
R6-11-205.	Hearing decisions
R6-11-206.	Failure of a party to appear
R6-11-207.	Hearing officer
R6-11-208.	Postponement of hearing

ARTICLE 1. GENERAL PROVISIONS**R6-11-101. Administrative agency**

The Arizona Department of Economic Security (DES) is the state agency responsible for administration of Job Training Partnership Act (JTPA) programs, designated by the Governor of Arizona, pursuant to P.L. 97-300 as amended.

Historical Note

Adopted as an emergency effective October 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-101 adopted as an emergency effective January 6, 1984, now adopted without change as a permanent rule effective April 5, 1984 (Supp. 84-2).

R6-11-102. Definitions

The following definitions shall apply in this Chapter, unless the context otherwise requires:

1. "Administrative entity" means the organizations or agencies designated by the Private Industry Council (PIC) to operate the programs for the Service Delivery Area (SDA) grant recipient.
2. "DES or the Department" means the Arizona Department of Economic Security.
3. "Direct subrecipient" means a subrecipient which contracts directly with DES to receive JTPA funds.
4. "Economically disadvantaged" means an individual as described in Section 4(8) of JTPA.
5. "Grant recipient" means the organization or agency designated by the Private Industry Council (PIC) and local elected officials to contract and receive funds for the Service Delivery Area (SDA) under Title II of JTPA.

6. "Interested party" means an individual who participates in or applies for participation in a program administered under JTPA or a person or organization which is directly or adversely affected by the action or inaction of DES with regard to JTPA.
7. "JTPA" means the Job Training Partnership Act of 1982, P.L. 97-300, as amended.
8. "Needs-based payment" means cash payments based on need providing direct benefits to individual participants to enable them to participate in a training program under JTPA.
9. "Private Industry Council (PIC)" means the group of individuals from the public and private sectors certified by the Governor to plan and oversee the Title II programs under JTPA.
10. "Service Delivery Area (SDA)" means the geographical area designated by the Governor in which a comprehensive program pursuant to JTPA will be planned by a certified PIC.
11. "Stop-gap employment" means work which an applicant does only because he has lost the customary work for which his training, experience or work history qualifies him. Employment would be considered "stop-gap" if the salary is substantially below the salary of the applicant's primary occupation and if he is working substantially under the skill level of his customary occupation. Regardless of the number of hours devoted to the stop-gap work activity, it is considered odd-job work outside the customary occupation for which he is qualified.
12. "Subrecipient" means any person, organization or other entity which receives JTPA funds either directly or indirectly from DES. Depending on local circumstances, the PIC, local elected official, or administrative entity may be a subrecipient.

Historical Note

Adopted as an emergency effective October 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-102 adopted as an emergency effective January 6, 1984, now adopted without change as a permanent rule effective April 5, 1984 (Supp. 84-2).

R6-11-103. Eligibility criteria

- A. Applicants shall be determined eligible for enrollment into JTPA programs if they meet the requirements set forth in both the General Criteria (subsection (B) below) and the respective Specific Criteria (subsection (C) below) *or* otherwise comply with Section 181(k) of JTPA.
- B. General criteria. Applicants must meet the following:
 1. Be citizens or nationals of the United States, or lawfully admitted permanent resident aliens, or lawfully admitted refugees or parolees, or other individuals authorized by the United States Attorney General to work in the United States; and
 2. Be in compliance with Section 3 of the Military Selective Service Act (50 U.S.C. App. 453) if applicable.
- C. Specific criteria. To be determined eligible for enrollment in one of the described JTPA subparts (Titles II-A, II-B, or III) or

Section 124, an applicant must meet the criteria listed below for that specific subpart.

1. Title II-A, adult or youth programs:
 - a. Economically disadvantaged; and
 - b. Sixteen years of age or older, except that youths aged 14 and 15 may also be eligible if the SDA Job Training Plan has provided for a "pre-employment skills training program" for these youths; and
 - c. Resident of the SDA to which application is made, except that non-residents may be eligible if the SDA Job Training Plan provides for service to non-residents.
 2. Title I, Section 124, training programs for older individuals:
 - a. Economically disadvantaged; and
 - b. Fifty-five years of age or older.
 3. Title II-B, Summer Youth Employment Training Programs:
 - a. Economically disadvantaged; and
 - b. Age 16 through 21, except that individuals aged 14 and 15 may be eligible if the SDA Job Training Plan identifies services to this age group; and
 - c. Resident of the SDA to which application is made, except that non-residents may be eligible if the SDA Job Training Plan provides for service to non-residents.
 4. Title III, employment and training assistance for dislocated workers programs (any one of the four eligibility categories):
 - a. Category one:
 - i. Has been terminated or laid-off from employment; and
 - ii. Is eligible for or has exhausted his entitlement to unemployment compensation.
 - b. Category two:
 - i. Has been or will be terminated as a result of any permanent closure of a plant or facility; and
 - ii. Is unlikely to return to his previous industry or occupation.
 - c. Category three:
 - i. Has been involuntarily unemployed (as defined in A.R.S. § 23-777 and A.C.R.R. R6-3-5605, R6-3-56130 and R6-3-56205) for 13 weeks or more, or is employed in stop-gap employment; and
 - ii. Is unlikely to return to a previous or similar occupation within the applicant's labor market area.
 - d. Category four:
 - i. Has been involuntarily unemployed (as defined in A.R.S. § 23-777 and A.C.R.R. R6-3-5605, R6-3-56130 and R6-3-56205) for 13 weeks or more, or is employed in stop-gap employment; and
 - ii. Has little likelihood of employment in a similar industry or occupation within the applicant's labor market area; and
 5. Applicants shall be eligible for Title II-A programs even though they are not economically disadvantaged, if they have encountered substantial barriers to employment as defined in Section 203(a)(2) of JTPA and the respective SDA Job Training Plan or SDA contract with DES.
 6. Handicapped youth shall be considered as a family of one for the purposes of determining eligibility.
- D.** Applicants determined eligible may be enrolled as participants within 45 calendar days of the date of the completed applica-

tion. If the applicant is not enrolled within this time, a new application must be taken (or the original application updated to show any changes in applicant data and the date of update) and have affixed the signature of the applicant (parent or guardian if the applicant is under age 18) and the authorized SDA or subrecipient representative.

Historical Note

Adopted as an emergency effective October 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-103 adopted as an emergency effective January 6, 1984, now adopted without change as a permanent rule effective April 5, 1984 (Supp. 84-2).

R6-11-104. Selection-enrollment responsibility

- A.** Each direct subrecipient of the Department shall establish criteria to be used for selection of eligible applicants to participate in JTPA programs for which the subrecipient is funded and responsible.
- B.** Selection criteria shall be objective and applied equitably to conform with the intent and requirements of the JTPA, and be consistent with the respective Job Training Plans. The criteria for adult programs shall relate to the potential for increased employment and earnings and reduced welfare dependency.
- C.** A listing of the selection criteria used shall be made available to any applicant.
- D.** Enrollment of non-economically disadvantaged participants with substantial barriers to employment, as defined in Section 203(a)(2) of JTPA, shall not exceed 10% of the current and cumulative number of individuals enrolled in all Title II-A, Section 202(a)(1), programs within the respective SDA.
- E.** Enrollment of Title III participants shall follow priority in order of eligibility categories as identified in R6-11-103.C.4.

Historical Note

Adopted as an emergency effective October 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-104 adopted as an emergency effective January 6, 1984, now adopted without change as a permanent rule effective April 5, 1984 (Supp. 84-2).

R6-11-105. Needs-based payments

- A.** Each direct subrecipient shall establish needs-based payment criteria as approved by the Department. Such criteria may take into account such factors as the participant's or the participant's family's cost of housing, food, health care, child care, transportation, clothing, and other similar factors during the training period. It shall also take into account income available to meet these subsistence needs, including any specific supportive services provided by JTPA or any other agency. Such criteria shall be applied equitably to all participants
- B.** A listing of the needs-based payment criteria used shall be made available to any applicant.

Historical Note

Adopted as an emergency effective October 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-105 adopted as an emergency effective January 6, 1984, now adopted and amended as a permanent rule effective April 5, 1984 (Supp. 84-2).

R6-11-106. Nepotism

- A. No direct recipient, grant recipient, subrecipient, or administrative entity may hire a person in an administrative capacity, staff position, on-the-job training position, faculty position, or any other training position funded under the Act if a member of that person's immediate family is engaged in an administrative capacity or other position influential in making selections for hiring or training for the direct recipient, grant recipient, subrecipient, or administrative body.
- B. No direct recipient, grant recipient, subrecipient, or administrative body may hire a person in an administrative capacity, staff position, on-the-job training position, faculty position, or any other training position funded under the Act if a member of that person's immediate family is engaged in an administrative capacity or other position influential in making selections for hiring or training for the direct recipient, grant recipient, subrecipient, or administrative body from which that body receives its funds. To the extent that an applicable state or local legal requirement regarding nepotism is more restrictive than this position, such state or local requirement shall be followed.
- C. For purposes of this Section, the term "immediate family" means wife, common-law wife, husband, common-law wife, husband, common-law husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, daughter-in-law, son-in-law, mother-in-law, father-in-law, aunt, uncle, nephew, niece, stepparent, or stepchild.
- D. The term "person in an administrative capacity" or "position influential in hiring or making selections for training", includes those persons who have overall administrative responsibility for the program including all elected or appointed officials who have any responsibility for the obtaining of and/or approval of any grant funded under this Act, as well as other officials who have influence or control over the administration of the program, such as the project director, deputy director, unit chiefs or persons who have selection, hiring, placement or supervisory responsibilities for ensuring equity in the implementation of this Act. These restrictions shall not apply to persons who are economically disadvantaged and serve on PICs, councils or committees which are linked or are a part of the JTPA system.
- E. This rule may be waived where the Department finds that exceptional circumstances exist which would make enforcement or application of this rule impracticable, unwarranted, or otherwise contrary to the intent of the JTPA.
- F. For Native American programs, Public Law 97-300, Title IV definition shall apply.

Historical Note

Adopted as an emergency effective October 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). New Section R6-11-106 adopted as a permanent rule effective April 5, 1984 (Supp. 84-2).

R6-11-107. Confidentiality

Each subrecipient of JTPA funds shall abide by and ensure compliance with all applicable state and federal statutes, policies and regulations regarding the use and disclosure of information concerning any applicant or participant under JTPA programs.

Historical Note

Adopted as an emergency effective October 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Correction. Supp. 84-1 should read Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days.

Former Section R6-11-107 adopted as an emergency effective January 6, 1984, now adopted without change as a permanent rule effective April 5, 1984 (Supp. 84-2).

R6-11-108. Cost principles

- A. For purposes of reporting JTPA expenditures, subrecipients shall utilize cost principles set forth in JTPA, applicable federal regulations, and cost manuals and guides developed by the Department.
- B. The Department shall utilize OMB circulars A-87 and A-102 to determine the appropriateness of direct and indirect costs incurred by subrecipients.
- C. The expenditures associated with the activities of outreach, intake and eligibility determination shall be chargeable to the training cost category.

Historical Note

Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-108 adopted as an emergency effective January 6, 1984, now adopted without change as a permanent rule effective April 5, 1984 (Supp. 84-2)

R6-11-109. Title III matching requirements

- A. The direct subrecipient shall be responsible for developing and documenting the required matching funds.
 - 1. Matching resources must be generated from non-federal sources and may not be used as matching for other projects.
 - 2. Matching funds shall be those documented costs provided for the support of programs funded under JTPA Title III.
 - 3. The following budget categories shall be legal match for JTPA Title III funds, provided that they are documented, verifiable, necessary, and reasonable to accomplish Title III goals, and are costs which would otherwise be allowable under the Act.
 - a. State-funded unemployment insurance benefits. Up to 50 percent of state-funded unemployment insurance benefits provided to an eligible dislocated worker who is enrolled in a program of training or retraining under this Title.
 - b. Base wages. The base wages paid by an employer to an eligible participant during training if training is authorized by an on-the-job training (OJT) contract funded by this Title less reimbursement by JTPA funds or other federal funds.
 - c. Direct costs. For purposes of JTPA Title III, these may consist of:
 - i. Depreciation of equipment and buildings tied directly to the program;
 - ii. Identified donations or cash contributions;
 - iii. Fair market value of donated services, and real or personal property or its usage;
 - iv. Cash or in-kind contributions;
 - v. Expendable personal property may include items such as expendable equipment, office or educational supplies, laboratory or vocational supplies, and shall not exceed a fair market value; and
 - vi. Nonexpendable personal property which must be identifiable through acceptable accounting practices.
 - d. Indirect costs. Indirect costs, allocated in accordance with Office of Management and Budget Circular A-87, may be a source of matching funds. The amount used as match may not be shifted to another federally-sponsored grant program or contract.

- e. State or local education funds. Any documented state or local education funds provided for the support of programs funded under JTPA Title III may be used as match. This includes state categorical full-time student equivalent (FTSE) funds used as support for approved Title III programs.
- B. Direct subrecipients of Title III funds shall provide required matching funds associated with the funds received.
- C. Matching funds, generated during one contract period, which are in excess or required match may be carried forward and used in the subsequent contract period. Such carry-forward of match generated by the subrecipient in the performance of a Title III contract may be used as match only for Title III programs.

Historical Note

Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-109 adopted as an emergency effective January 6, 1984, now adopted and amended as a permanent rule effective April 5, 1984 (Supp. 84-2).

R6-11-110. Matching JTPA education 8% funds

- A. Discretionary monies allocated to the Governor pursuant to Section 123 of JTPA shall be used to provide financial assistance to any state education agency(ies) responsible for education and training and expended for identified target populations in accordance with the Governor's Coordination and Special Services Plan.
- B. Matching funds under Section 123, JTPA
 - 1. The contracting agency(ies) shall be responsible for developing and documenting the required match under Section 123 (b).
 - 2. This match may include:
 - a. State categorical funds;
 - b. Federal Vocational Education Act funds;
 - c. Any other non-JTPA federal funds expended for employment and training programs for disadvantaged youth and adults (including special target populations) directly served in programs funded by JTPA education 8% monies;
 - d. Documented in-kind match for the activities under (a), (b), and (c);
 - e. The base wages paid by an employer to an eligible participant during training if training is authorized by an on-the-job training (OJT) contract funded by JTPA education 8% monies less reimbursement by JTPA funds or other federal funds.
 - 3. In-kind match means costs that are prorated to the extent that they are of direct benefit to the program, and may consist of:
 - a. Depreciation of equipment and buildings;
 - b. Identified donations;
 - c. Fair market value of donated services and real or personal property or its usage;
 - d. Expendable personal property which may include items such as expendable equipment, office or educational supplies, laboratory or vocational supplies, and shall not exceed its fair market value;
 - e. Nonexpendable personal property, which must be identifiable through acceptable accounting practices.
 - 4. Funds used for match with JTPA education monies shall not be used as match with other funds.

Historical Note

Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days

(Supp. 84-1). Former Section R6-11-110 adopted as an emergency effective January 6, 1984, now adopted and amended as a permanent rule effective April 5, 1984 (Supp. 84-2).

R6-11-111. Complaint resolution procedures

- A. Each direct subrecipient of JTPA funds shall maintain a record of complaints and grievances, and shall appoint a grievance officer for the purpose of processing complaints or grievances filed pursuant to Sections 144 and 167 of JTPA, except for complaints of discrimination filed pursuant to Title VI of the Civil Rights Act of 1964.
- B. All participants upon enrollment and other interested parties upon request shall be provided a written description of the subrecipient complaint procedures including notification of their right to file a complaint and instructions on how to do so.
- C. The procedure should include at a minimum:
 - 1. A requirement that the complaint be in writing;
 - 2. Provide the name and address of the organization or individual against whom the complaint is made;
 - 3. Provide the name, address and signature of the complainant;
 - 4. Provide authorized subrecipient agency signature and date of filing;
 - 5. Written notice of date, time and place of hearing, including notification of the opportunity to present evidence;
 - 6. A record hearing be held within 30 days of the date of the complaint;
 - 7. A written decision issued within 60 days of the date of the complaint.
 - 8. The decision shall include notice of the right to appeal pursuant to Article 2 of these rules.
- D. Interested parties seeking to file grievances under JTPA to the Department of Economic Security shall be referred to the nearest appropriate office of the Department.
- E. In cases alleging violations of the non-discrimination provisions of JTPA Section 167 which would also be violations of Title VI of the Civil Rights Act of 1964, subrecipients shall immediately advise complainants of their right to file directly with the U.S. Department of Labor, Office of Civil Rights, and provide them with instructions on how to do so.

Historical Note

Adapted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-111 adopted as an emergency effective January 6, 1984, now adopted and amended as a permanent rule effective April 5, 1984 (Supp. 84-2).

ARTICLE 2. JTPA APPEAL PROCESS

R6-11-201. Right to appeal

Any interested party shall have a right to appeal a determination, decision, order, or other action or inaction of either the Department or a JTPA subrecipient.

Historical Note

Adopted as an emergency effective October 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-201 adopted as an emergency effective January 6, 1984, now adopted without change as a permanent rule effective April 5, 1984 (Supp. 84-2).

R6-11-202. Hearing request

- A.** A request for a hearing is any oral or written communication by an interested party or its legal counsel which expresses a clear intent to appeal an adverse action. The freedom to make such a request must not be limited or interfered with in any way.
If the request is oral, the Department shall prepare a written request on behalf of the individual and obtain the individual's signature on the request.
- B.** The request for hearing shall be filed in accordance with the following time limits:
1. Within ten days of the date of the adverse decision when the request is an appeal of an adverse decision resulting from a subrecipient grievance procedure;
 2. Within ten days of the date that the subrecipient failed to hold a hearing or issue a decision within the required time limit;
 3. Within one year of the date of the alleged adverse occurrence in all other cases.
- C.** The submission of any request for a fair hearing not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the Department that the delay in submission was due to Department error or misinformation or to delay caused by the U.S. Postal Service or its successor.
- D.** The hearing shall be conducted within 30 days of the request unless all interested parties waive the time limit in writing.

Historical Note

Adopted as an emergency effective October 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-202 adopted as an emergency effective January 6, 1984, now adopted without change as a permanent rule effective April 5, 1984 (Supp. 84-2).

R6-11-203. Notice of hearing

- A.** Advance written notice of the hearing will be provided by regular mail to all interested parties at least ten days prior to the hearing to permit adequate preparation of the case. The notice will include:
1. The time, date and place of the hearing. Hearings shall be held at those regularly established hearing locations most convenient to the interested parties, or, at the discretion of the hearing officer, by telephone.
 2. The name, address, and telephone number of the person to notify in the event it is not possible for the party or its legal counsel to attend the scheduled hearing.
 3. The hearing procedures, a statement of the issues, and any other information which would provide the party or its legal counsel with an understanding of the proceedings and contribute to the effective presentation of the party's case.
 4. An explanation that the party or its legal counsel may examine the case file prior to the hearing.
- B.** Any interested party may waive, either in writing or on the record, his right to notice.

Historical Note

Adopted as an emergency effective October 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-203 adopted as an emergency effective January 6, 1984, now adopted

without change as a permanent rule effective April 5, 1984 (Supp. 84-2).

R6-11-204. Hearing procedures

- A.** Hearing officer duties.
1. Hearings will be conducted by an impartial official who has no personal involvement in the case and who was not directly involved in the initial determination of the action which is being contested.
 2. The hearing official will be a state-level employee designated to conduct hearings and will:
 - a. Regulate and conduct the course of the hearing consistent with due process to insure an orderly hearing.
 - b. Insure all relevant issues are considered, and evidence not related to the issues is not allowed to become a part of the record.
 - c. Administer oaths or affirmations.
 - d. Request, receive, and make a part of the record all evidence determined necessary to decide the issues being raised.
 - e. Take notice of judicially cognizable facts or generally recognized technical or scientific facts within the agency's specialized knowledge.
 - f. Make a recommendation to the Director pursuant to A.R.S. § 41-1992(C).
- B.** Witnesses and subpoenas.
1. An interested party shall arrange for the presence of his witnesses at a hearing.
 2. A notice to attend a hearing, or a subpoena, may be issued by the hearing officer on his own motion.
 3. Subpoenas requiring the attendance of witnesses or the production of documentary evidence at a hearing may be issued by the hearing officer on his own motion or upon written application by an interested party. Such request shall contain the name of the individual or documents desired, the address at which the subpoena may be served, and a brief statement of the facts which the applicant expects to prove by the individual or documents requested. The application shall be submitted to the Department in sufficient time prior to the hearing to permit preparation and service of the subpoena before the hearing.
 4. Witnesses subpoenaed who attend hearings shall be allowed fees at the same rate as paid by the superior court.
- C.** Consolidation of cases. When the same or substantially similar evidence is relevant and material to the issues in more than one case, proceedings thereon may be conducted jointly, a single record of the proceedings made and evidence introduced with respect to one case considered as introduced in the others, unless the hearing officer determines that such consolidation would be prejudicial to the interests or rights of any interested party.
- D.** Hearings. All interested parties shall be ready and present with all witnesses and documents at the time and place specified in the notice of hearing and shall be prepared at such time to dispose of all issues and questions involved in the appeal or petition.
1. Public hearings. All hearings shall be open to the public, but the hearing officer conducting a hearing may close the hearing to other than interested parties to the extent necessary to protect the interests and rights of the interested parties where confidential information as defined or protected by statute is offered into evidence.
 2. Hearing rights. A party or its legal counsel must be given adequate opportunity to examine all documents and records to be used during the course of the hearing at a

reasonable time before the date of the hearing, as well as during the hearing, and:

- a. Receive a copy, without charge, of relevant portions of the case file if requested.
- b. Present the case or have it presented by legal counsel.
- c. Present witnesses.
- d. Advance arguments without undue influence.
- e. Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.
- f. Submit evidence to establish all pertinent facts and circumstances in the case.

The subrecipient which issued the adverse action shall proceed initially and have the burden of proof in presenting the case before the hearing officer.

3. Record of the hearing. A full and complete record, including properly identified exhibits, shall be kept of all proceedings in connection with an appeal or petition, and such record shall be open for inspection by any interested party. When a transcript of the proceedings is made for the Department's use or for further proceedings, a copy may, upon written request, be furnished to interested parties who shall be charged therefor, or the charge may be waived if evidence of impecunious circumstances is presented.
4. Oral arguments and briefs. At the conclusion of any hearing, the interested parties shall be granted a reasonable opportunity to present argument on all issues of fact and law to be decided. The hearing officer shall afford interested parties an opportunity either to present oral argument or to file briefs, or both. The hearing officer may limit the time of the oral argument.
5. Continuances or reopenings. The hearing officer may, on his own motion or at the request of any interested party, upon a showing of good cause, continue the hearing to a future time or reopen a hearing before a decision is issued to take additional evidence.

Historical Note

Adopted as an emergency effective October 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-204 adopted as an emergency effective January 6, 1984, now adopted without change as a permanent rule effective April 5, 1984 (Supp. 84-2).

R6-11-205. Hearing decisions

A. Decisions.

1. The hearing officer shall issue a recommendation in accordance with A.R.S. § 41-1992.
2. All evidence, including records and documents of the Department which the hearing officer makes a part of the record of the hearing shall be considered in determination of the case. Every decision shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law.
3. The recommendation shall be issued not later than 60 days after the filing of the request for hearing unless the time limit is waived by all interested parties in writing or on the record. A party may request a Director's Review when a recommendation has not been issued within 60 days of the request for hearing and the time limit has not been waived.

3. A copy of such recommendation, together with an explanation of rehearing and reconsideration rights, shall be delivered or mailed to each interested party or its attorney of record.
4. The recommendation of the hearing officer shall become the decision of the Department upon approval by the Director, and the decision shall become final unless a request for reconsideration is filed within ten days after the decision is mailed or otherwise delivered to the interested parties.
6. Prior to approving the recommendation, the Director may remand the case to the hearing officer for review and/or rehearing, specifying the nature of any additional issues to be considered. The Director may issue a decision which differs from the hearing officer's recommendation without remanding the case for review or rehearing.

B. Informal dispositions. An appeal or petition may be informally disposed of without further review on the merits:

1. By withdrawal, if the appellant withdraws the appeal in writing or on the record at any time before the recommendation is issued; or
2. By dismissal, if the appellant fails to file the appeal within the time permitted; or
3. By stipulation, if the parties agree on the record or in writing at any time before the recommendation is issued, subject to approval by the hearing officer; or
4. By default, if the appellant fails to appear or waives appearance at the scheduled hearing.

C. Rehearing

1. Except as provided in paragraph (7), a party may request a rehearing or review by filing a written motion specifying the particular grounds therefor. The motion must be filed within ten days after the recommendation was mailed or otherwise delivered. For purposes of this subsection, a recommendation shall be deemed to have been served when personally delivered or mailed to the party at its last known residence or place of business, or to its attorney of record.
2. A motion for rehearing under this rule may be amended at any time before it is ruled upon by the hearing officer. A response may be filed by any other party within ten days after service of such motion or amended motion. The hearing officer may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
3. A rehearing of the recommendation may be granted for any of the following causes materially affecting the moving party's rights:
 - a. Irregularity in the administrative proceedings of the agency or its hearing officer or the prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;
 - b. Misconduct of the Department or its hearing officer or the prevailing party;
 - c. Accident or surprise which could not have been prevented by ordinary prudence;
 - d. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
 - e. Excessive or insufficient penalties;
 - f. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing;
 - g. That the recommendation is not justified by the evidence or is contrary to law.

4. The hearing officer may affirm or modify the recommendation or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons set forth in paragraph (3). An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.
5. Not later than ten days after a recommendation is rendered, the hearing officer may on his or her own initiative order a rehearing or review of its recommendation for any reason for which a rehearing might have been granted on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the hearing officer may grant a motion for rehearing for a reason not stated in the motion. In either case, the order granting such a rehearing shall specify the grounds therefore.
6. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may within ten days after such service serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days by the hearing officer for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.
7. If in a particular case the hearing officer makes specific findings that the immediate effectiveness of the recommendation is necessary for the immediate preservation of the public peace, health and safety and that a rehearing or reconsideration is impracticable, unnecessary or contrary to the public interest, the recommendation may be issued as a final decision by the Director without an opportunity for rehearing or reconsideration. If a recommendation is issued as a final decision without an opportunity for rehearing or reconsideration, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Department's final decisions.
8. For purposes of this Section the terms "contested case" and "party" shall be defined as provided in A.R.S. § 41-1001.
9. To the extent that the provisions of this rule are in conflict with the provisions of any statute providing for rehearing of decisions of the Department such statutory provisions shall govern.

D. Director's reconsideration

1. Except as provided in subsection (C)(7) above, a party may request a Director's reconsideration of an adverse hearing decision within ten calendar days after the decision was mailed or delivered.
2. The request for reconsideration must be in writing. It should set forth a statement of the grounds for reconsideration, and may be filed personally or by mail.
3. Except as provided in subsection (C)(7) above, upon timely filing of such a request, any action pursuant to the original decision shall be stayed until the Director's decision upon reconsideration is issued.
4. After receipt of a request, the Director will:
 - a. Remand the case for rehearing, specifying the nature of any additional evidence required and/or issues to be considered, or;
 - b. Decide the appeal on the record.
5. The Director's recommendation shall be the final recommendation.
6. A copy of the decision will be distributed to each interested party by regular mail.

Historical Note

Adopted as an emergency effective October 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-205 adopted as an emergency effective January 6, 1984, now adopted and amended as a permanent rule effective April 5, 1984 (Supp. 84-2).

R6-11-206. Failure of a party to appear

- A. If there is no appearance on behalf of an interested party at a scheduled hearing, the hearing officer may adjourn the hearing to a later date or proceed to review the evidence of record and such other evidence as may be presented at the scheduled hearing and make a disposition or recommendation on the merits of the case.
- B. If a recommendation is issued adverse to any interested party that failed to appear at a scheduled hearing, that party may request a hearing to determine if good cause exists to reopen the hearing. The request to reopen must be in writing, filed within ten days of the date of mailing of the recommendation or disposition, and shall set forth the reasons for the failure to appear.
- C. A hearing shall be held to determine whether there was good cause for the failure to appear and, in the discretion of the hearing officer, to review the merits of the case. Upon a finding of good cause for failure to appear at the scheduled hearing, the disposition or recommendation on the merits shall be vacated and the case reset for hearing.
- D. Good cause warranting reopening of a case shall be established upon proof that both the failure to appear and failure to timely notify the hearing officer were beyond the reasonable control of the nonappearing party.
- E. When an appellant fails to appear or waives appearance, the hearing officer may enter a default disposition without further right to appeal except as provided in this rule.

Historical Note

Adopted as an emergency effective October 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-206 adopted as an emergency effective January 6, 1984, now adopted without change as a permanent rule effective April 5, 1984 (Supp. 84-2).

R6-11-207. Hearing officer

- A. Disqualification for cause. No person shall participate on behalf of the Department in any case in which he is an interested party. Challenges to the interest of any hearing officer may be heard and decided by that hearing officer, or, upon written request, referred to his immediate supervisor.
- B. Change of hearing officer. Not later than five days prior to the date set for the hearing, any interested party may file a written request for change of hearing officer. The hearing officer shall immediately transfer the matter to another hearing officer who shall conduct the hearing. No more than one change of hearing officer shall be granted to any one party.

Historical Note

Adopted as an emergency effective October 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-207 adopted as an emergency effective January 6, 1984, now adopted

without change as a permanent rule effective April 5, 1984 (Supp. 84-2).

R6-11-208. Postponement of hearing

At the request of a party or on his own initiative, the hearing officer may order, orally or in writing, that a hearing be postponed. A requested postponement shall be granted if:

1. The request is promptly made after the party received the notice of hearing, or after the circumstance requiring postponement arises, and
2. The party has good cause for not attending the hearing at the time and date set. Good cause exists when the circumstances causing the request are beyond the reasonable

control of the requesting party, and failure to grant the postponement would result in undue hardship for the requesting party.

Historical Note

Adopted as an emergency effective October 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-208 adopted as an emergency effective January 6, 1984, now adopted without change as a permanent rule effective April 5, 1984 (Supp. 84-2).